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December 21, 2009

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Proposed Rule – Revisions to Reg Z – Closed-end Mortgage Rules
Docket No. R-1366

Dear Ms. Johnson:

This letter is submitted in response to the Proposed Rule revising Reg Z's closed-end mortgage rules, finance charge rules, and optional credit protection product rules.

Securian Financial Group is a leading provider of credit insurance programs to the bank and credit union industry, and administers debt cancellation contracts and debt suspension agreements for our clients. We are also a lending and deposit forms provider to our credit union clients, and as such, provide closed-end and open-end mortgage and home equity loan forms, credit card forms, and deposit forms to hundreds of credit unions nationwide. It is with this background and knowledge that this letter is submitted. We appreciate the opportunity to provide this information.

The following will provide our comments for the various proposals.

IMPLEMENTATION PERIOD

The Board contemplates providing creditors sufficient time to implement any revisions that may be adopted. The Board seeks comment on an appropriate implementation period.

We recommend an implementation period of 12-18 months, especially if both closed-end and HELOC rules will have the same effective date. The proposal is a complete overhaul of the forms and disclosures that need to be made, as well as a complete re-calculation of the finance charge. The

changes that would need to be made to loan forms, systems programming, policies & procedures, compliance programs, and training will be unprecedented. Many creditors will have to rely on third-party forms providers and data processors, who will need months to make the necessary revisions. Given the scope and breadth of the changes, 12-18 months is a very reasonable implementation period.

RE-DEFINITION OF "FINANCE CHARGE"

We are vehemently opposed to the Board's proposal to eliminate the current exclusions for many of the fees and voluntary products in connection with closed-end mortgage loans, and to require such fees to be included in the calculation of the APR. While we applaud the Board's attempts to make the disclosures more simple and meaningful for consumers and creditors alike, and agree that the "some in, some out" approach to the finance charge calculation needs to be improved, we do not agree that an all-inclusive approach accomplishes that objective. In fact, the Board's proposal will have a very detrimental effect on both consumers and creditors.

We suggest the opposite approach – i.e., to exclude all fees from the finance charge and APR, similar to what the Board has put in place for credit cards. We believe this is the better approach for the reasons set forth below.

1. Consumers Do Not Understand the APR. As the Board has consistently discovered by its own consumer research, consumers simply do not understand the APR. The vast majority of consumers believe the APR to be the interest rate. The Board recognized this in its recent final rules amending the credit card and open-end lending rules when it eliminated the requirement to disclose the effective APR. In the Supplementary Information to the credit card rules published in the Federal Register on January 29, 2009, the Board said, "[w]ith regard to the effective APR [on periodic statements], testing overwhelmingly showed that few consumers understood the disclosure…" The credit card rules now require that the terms "interest rate" and "fees" be used, rather than APR and finance charge.

The same principle applies to the APR in closed-end disclosures. Consumers do not understand the APR any better when they are shopping for credit than when it appears on their credit card statements. The Board has already recognized this more than once. First, in its recent final rules for private education loans, it de-emphasized the APR and instead emphasized the interest rate. And in the instant rulemaking, the Board once again conducted consumer testing, and reports the results as follows:

Participants in the Board's consumer testing generally did not understand the APR and often mistook it for the loan's interest rate. The Board tested alternative descriptive statements and formats for the APR, but consumers continued to be confused by the APR. For example, some participants thought the APR reflected future adjustments to the interest rate, or the maximum possible interest rate for a variable rate loan. A few participants recognized that the APR differed from the interest rate, but were unable to articulate the reason. In addition, when presented with two hypothetical loan offers, participants did not use the APR to compare and choose between the offers. Instead, participants chose a loan based on one or more of the following pieces of information: the interest rate, monthly payment, and settlement costs. *Federal Register Vol. 74 at 43296-43297.*

Despite this overwhelming indictment of the APR, the Board goes on to state that, based on this research, it will retain the APR disclosure. With all due respect, we are mystified by the Board's logic.

This is especially so in light of the fact that, when the Board eliminated the effective APR requirement for credit cards, it did so because it recognized that additional attempts at explaining the effective APR would simply be fruitless. The Board continues to prove that there is no practical way of getting consumers to understand the APR. It should, quite frankly, stop trying. It did so for credit cards and student loans; it should do so for mortgage loans as well.

2. The Board's Proposal is Still a "Some In, Some Out" Calculation. While the Board's proposal would include many of the fees and charges that are currently excluded from the definition of "finance charge", it would still allow some exclusions, such as for some taxes, property insurance, and seller's points. It also requires creditors (and consumers) to understand and apply a definition of "finance charge" or "effective APR". So, the difficulties in determining what is and is not a finance charge may be alleviated somewhat, but not eliminated completely. There will still be creditor confusion as to which fees should and should not be included in the APR; the Board's discussion of the complexities of determining when taxes will and will not be included in the APR is a good illustration of this. Meanwhile, consumers will continue to misunderstand the disclosure. No purpose will be served by such a result.

3. Including all Fees in the Finance Charge and APR Creates an Apples-to-Oranges Comparison and Misleads the Consumer. Including all fees in the APR would greatly reduce the ability of the consumer to compare interest rates and fees while shopping for credit. Such a change defeats one of the primary purposes of TILA, which is to allow consumers to do an "apples-to-apples" comparison of rates and fees related to credit among various creditors. For example, suppose a consumer is shopping for a mortgage and is comparing ABC Bank with XYZ Bank. ABC Bank is advertising an APR of 22%. XYZ is advertising 19%. However, XYZ's interest rate is 9%, while ABC's is 5.5%. ABC's quote includes optional credit life and disability insurance; XYZ's does not (because XYZ does not offer credit insurance). Also, ABC will not charge the consumer an appraisal fee; XYZ requires a $450 appraisal fee before the appraisal will be performed. If the consumer bases his decision on the APR, he will believe that XYZ's loan is "cheaper". What most consumers will not realize, however, is that ABC's interest rate is 4 points lower than XYZ's, and he can lower his monthly payments (and therefore his cost of credit) by simply declining credit insurance. (And for the consumers who do realize that, they will simply disregard the APRs, once again proving that the disclosure serves no purpose.)

By requiring all fees to be lumped into the APR, the Board would be luring unsuspecting consumers into a false sense of security, which is far worse than overt confusion. The consumer will be duped into thinking that comparing APRs will be comparing apples to apples, when in fact he would unknowingly be comparing apples to oranges. This will result in potentially misleading comparisons of products and will make the APR even less useful than it is currently. The result is that the consumer could choose a mortgage loan that he otherwise would not have chosen if the disclosures were clearly understood.

4. Voluntary Product Fees are Fundamentally Different than Required Fees, and Should Not be Included in the APR. Premiums and fees charged for voluntary credit protection products such as credit insurance and debt cancellation programs are unlike required fees such as origination fees and the cost of an appraisal. Credit protection products are an important, voluntary benefit to consumers which allows them to manage their risk and protect their credit rating if they fall on hard times due to a

disability or if they lose their jobs. They also protect the borrower's family if the borrower dies. These products are completely optional. The premiums or fees are not imposed by the creditor and are therefore not a true "cost of credit". Such costs can be avoided simply by declining coverage. Even if the Board determines to add other fees into the APR, voluntary product fees should not be included.

5. The Board Does Not Have Authority to Include the Fees in the Finance Charge and APR. The Truth-in-Lending Act, in Section 106, clearly sets forth the fees and charges that are to be excluded from the finance charge and APR. Section 105(a) generally authorizes the Board to make adjustments and exceptions to TILA to effectuate the statute's purposes, to prevent circumvention or evasion of the statute, or to facilitate compliance with the statute. 15 U.S.C. 1601(a), 1604(a). The Board does not have the legal authority to blatantly contradict the plain language of TILA. We respectfully submit that incorporating into Reg Z the exact opposite of what TILA sets forth goes beyond "adjustments and exceptions" to the statute. If an all-inclusive approach is to be effectuated, it should be effectuated by Congress' amendment to the statute. By the Board's own admission, it has encouraged Congress to adopt such an approach, and Congress has declined to do so. The Board should not now be doing via rulemaking what it could not accomplish by lobbying Congress. This goes beyond the Board's exemption and exception authority.

6. An All-inclusive APR will Encourage Non-Disclosure of Junk Fees. We disagree with the Board's contention that including all fees in the APR will discourage junk fees. Junk fees are unnecessary fees that are tacked on by unscrupulous lenders unbeknownst to the consumer. Such fees are inherently nefarious. Including such fees into the APR will not suddenly instill scruples where none exist; if anything, it will only encourage such lenders to refrain from disclosing the fees altogether. Moreover, the all-inclusive approach could actually help bad actors mask such fees, since the APR will have all fees lumped together and it will not be readily apparent which fees are (or are not) included in the APR. We also note that HUD's new Good Faith Estimate of settlement charges also lumps the fees together into general categories; little to no itemization is permitted. As such, an all-inclusive APR, coupled with a vague, confusing disclosure of settlement costs on the GFE, makes all fees less transparent. The first time the consumer will see an itemization is at closing (or 3 days prior to closing), which is too late for the consumer to do anything about it. As the Board has discovered in the past, consumers who are in the midst of purchasing a home or who need the money from their equity will not be in the position to turn down the loan so close to closing. As such, even if the consumer discovers the fees at the eleventh hour, he will still agree to pay them. Only the consumer will be harmed. This cannot be the Board's intent.

7. The Board's H.15 Release and the Average Prime Offer Rates are Based on Interest Rates, Not APR. The industry norm when determining average or competitive rates is to compare interest rates (or interest rate + points), not true effective APRs. This creates two issues. First is the threshold issue of how lenders are supposed to determine pricing, and how consumers are supposed to judge competitiveness, if the required disclosure is the APR, but the industry markers are interest rates. Such a discrepancy will be untenable for creditors and consumers alike. Even if the industry markers "catch up" in the coming years (e.g., all lenders start reporting the all-inclusive APR), there will be too many factors involved for creditors to know what they are basing their pricing on. Again, the all-inclusive APRs are apples-to-oranges comparisons, and creditors will not know the components of the rates disclosed in the H.15. It will be very difficult to price their mortgages accordingly.

The second issue is with the Board's proposed requirement of plotting the APRs. This disclosure requires the lender to explain how the effective APR compares with similar loans in the industry by showing the Average Prime Offer Rate and the HOEPA rate. This requirement would force the lender to compare its APR with other *interest* rates, which makes the disclosure both meaningless and misleading.

8. Treating the Finance Charge and APR differently for Credit Cards and Mortgages Will Be Confusing. Calculating the finance charge and APR in different ways for different loan types will be confusing to both consumers and creditors. Creditors will need to learn the different rules for each different loan type, which only adds to the already-complex regulatory and litigation environment in the industry today. Consumers will also not understand why the rates they see on their credit cards are so different from the rates they see when shopping for a mortgage. They will not understand why, for instance, the credit card's rate is 13.99% while the mortgage rate is, e.g., 27.99%. This will just lead to even more confusion for consumers, and will not aid their understanding of "interest rate" versus "APR".

9. An All-Inclusive Approach Will Cause the APR to Vary Based on Geography and Loan Amount. The Board recognizes that the APR will vary based on geography and loan amount. This is just one more reason why such an approach should not be adopted. The impact on this can be significant. Not only do fees such as taxes and recording fees vary by state, they also vary by county. This creates three problems. First, for an accurate APR, the creditor would need to know in which county the applicant resides and use the proper recording fees. Second, the same loan from the same creditor will have different APRs for different borrowers depending on the county in which they reside. This will not only cause confusion, but could potentially lead to litigation risk if one applicant believes he is being given a discriminately higher rate than another applicant. This is especially true if the recording fees are higher in a county in which the residents are primarily minorities. Finally, for creditors located in, or who loan primarily to, residents of counties with higher recording fees, it could appear that their loans are more expensive than other creditors who do not have a presence in that county, when that may not be the case. This puts the creditors at a competitive disadvantage for no reason.

Varying APRs based on loan amount could cause even greater problems. A consumer could easily become confused if he wants to compare a $200,000 loan to a $250,000 loan, or a home equity loan of $50,000 compared to a refinancing of $200,000. The APRs will look very different, but may not accurately reflect the true costs of the loans. Again, the consumer will have difficulty comparison-shopping.

These differences are not insignificant. It does not help consumers shop for the best rates and loans for them, and does not effectuate the purposes of Reg Z.

10. An All-Inclusive Approach Will Artificially Inflate Rates Beyond HPML and HOEPA Thresholds. The Board estimates that the number of HOEPA loans will increase by 3% if the all-inclusive method is adopted. The Board feels that this has little impact on consumers. We disagree. Many creditors simply do not, and will not, provide HOEPA loans due to the increased regulatory, litigation, and operational burden. If the new calculations put a loan over the threshold, the creditor will not provide the loan. This hurts the creditor's loan volume but, more importantly, restricts credit

to those who are already likely having difficulty obtaining competitive loans. Creditors will not be able to make the distinction between "true" HOEPA loans (under the present definition) and "artificial" HOEPA loans (under the new inflated definition); they will not have the luxury of making an exception for an artificial HOEPA loan. The Board's proposal could decrease the number of mortgage loans (and home buyers) by at least three percent. This cannot be the Board's intent.

The Board has also not done the same analysis for the newly-created category of Higher-Priced Mortgage Loans (HPMLs). Since the thresholds are lower for HPMLs, presumably more loans, and more consumers, will be impacted than in the HOEPA analysis. Many creditors will also choose not to provide HPMLs. Again, this will restrict credit and fewer consumers will be able to obtain loans.

The Board has also not taken into consideration, to our knowledge, all the costs that would be included in the new APR when arriving at the 3% figure. By using the bankrate.com survey of closing costs, voluntary premiums and fees for credit protection products, for example, were not included. However, such fees and premiums would be required to be included in the new calculation, and more loans would be affected. The Board is underestimating the impact on the marketplace.

Even if creditors choose to make the artificial HOEPA and HPML loans, it will create confusion where none existed before. Consumers will be confused and concerned as to why they are suddenly considered to be "high risk" or "higher risk". They could believe their credit standing has deteriorated when it in fact has not. This will cause the consumer much angst, and could trigger complaints to the creditor that he is being treated unfairly or given a rate he does not deserve. As the Board notes, consumers do not understand the APR. They will certainly not understand it in the context of HOEPA and HPML loans and the federal regulations creating such loans.

For these reasons, artificially inflating the rates would only serve to increase creditors' regulatory and litigation burden, while creating even more confusion for the consumer. We urge the Board to avoid this result.

ELIMINATING THE EFFECTIVE APR IS THE BETTER APPROACH

We believe the Board's elimination of the Effective APR for credit cards and open-end credit was the proper approach, and should be applied to closed-end mortgages as well. The Board should require the interest rate and all fees to be disclosed, similar to the credit card disclosures. (In the case of closed-end mortgages, the fees would be disclosed via the "total settlement charges," with a cross-reference to the GFE and HUD-1/1A.) In such a case, the APR would be the same as the interest rate, and thus disclosing the interest rate would satisfy TILA's requirement to disclose an APR. This is the most simple, straight-forward approach. We explain as follows.

Eliminating the Effective APR Allows for an Apples-to-Apples Comparison of Interest Rates and Fees. As the Board's own consumer research shows, most consumers believe that the APR is the interest rate, and the interest rate is one of the most important factors for consumers when they shop for loans. If creditors are required to disclose the interest rate, rather than the APR, the Board can be confident that consumers understand the disclosure, and consumers can be assured that they are looking at comparable figures when shopping for a loan. This is because there are no other components of the rate that could confuse or cloud the comparison. The Total Settlement Charges

disclosure and the GFE and HUD-1/1A will allow for an apples-to-apples comparison of the fees that consumers may pay. As such, eliminating or avoiding the effective APR is the simplest way of improving the disclosures for consumers. It also eliminates confusion for the creditors, as they will no longer need to determine which fees are or are not part of the APR. It also allows apples-to-apples comparisons without regard to geographic location or loan size.

The Board Has the Authority to Eliminate the Effective APR. While we do not believe the Board's exemption and exception authority allows it to include the TILA-excluded fees into the finance charge, we do believe it has the authority to eliminate the Effective APR as a disclosure. First, the Board reached the same conclusion with regard to credit cards. Second, the plain language of TILA does not require the disclosure of an effective APR. It would also allow the Board to follow or retain the exclusions contained in Section 106. By disclosing the interest rates and fees, the Board will be effectuating the purpose of TILA to allow consumers to compare rates and fees in the simpliest form possible, and in a form which the Board already knows to be understood by consumers. And, since the fees will already be disclosed in the GFE and HUD-1/1A, consumers will continue to receive all the necessary disclosures required to make an informed choice when selecting their mortgage loan and lender.

Voluntary Credit Protection Products Will Continue to Require Affirmative Consent and Disclosures. Eliminating the Effective APR will not muddle or cloud the disclosures required to exclude credit insurance premiums and debt cancellation fees from the finance charge. Those rules can and should continue to exist, so that the consumers will be aware of the cost of such products, and can affirmatively and voluntarily elect to purchase such products if they so choose. Alternatively, the Board could choose to move these disclosure out of 226.4 and make them a substantive disclosure requirement under 226.38 and/or 226.18.

Eliminating the Effective APR will Allow the Lender's Interest Rates to be Compared with the Industry's Interest Rates. By requiring the lender to disclose interest rate rather than APR, this allows the lender to contrast its rate with similar loans in the industry via the Average Prime Offer Rate and the HOEPA rate in a meaningful way. It will make sense to the creditor and the consumer alike.

Eliminating the Effective APR Will Be Consistent With the Credit Card Rules. Eliminating the APR for mortgages would be consistent with the new credit card rules. This will be much more simple for creditors to administer, and much easier for consumers to understand. Consumers will not be confused when they see their credit card interest rates but then use a substantially different APR to shop for mortgage loans.

Eliminating the Effective APR Will Keep HOEPA and HPML Loans Consistent. Eliminating the Effective APR or maintaining the current definition will keep mortgage loans from being artificially inflated beyond the HOEPA and HPML triggers. This will maintain creditors' ability to determine the true risk of these loans, and will prevent consumers from being confused or offended regarding their credit standing. It will also prevent the cutting off of credit to 3% or more of consumers, and will prevent creditors' increased regulatory and litigation burden.

As explained above, we strongly believe that an all-inclusive approach to the APR would be extremely detrimental to consumers and creditors alike. If the Board chooses to re-define the finance charge and

APR, it should be to exclude all fees from the APR. This is the approach that consumers will understand, and will be the easiest for creditors to administer.

FINANCE CHARGE RE-DEFINITION - REQUIRED PROPERTY INSURANCE

The Board requests comment on the appropriateness of retaining the current exclusion from the finance charge of premiums for insurance against loss or damage to property or against liability arising out of the ownership or use of property. The Board notes that, under current § 226.4(d)(2), the category of property and liability insurance has been interpreted to include coverage against flood risks; the Board seeks comment on whether the reasons for retaining the exclusion discussed above are applicable to flood insurance specifically and, if not, whether it should be subject to separate treatment under Regulation Z. In addition, the Board requests comment on whether including such premiums in the finance charge could have adverse or unintended consequences for consumers and for creditors.

For all of the same reasons discussed above, we absolutely agree that the Board should retain the current exclusion for property and liability insurance, including flood insurance. These coverages are similar in their application and ultimate goal of protecting the lender's collateral and the consumer's home. The premiums are also the same that would be paid by the consumer even if he paid cash for his home or no longer had a mortgage loan, and most consumers understand the importance of having property insurance and thus maintain it willingly.

It is also difficult to determine the premiums for the coverage prior to the loan, and premiums can vary depending on carrier and geographical location, and the consumer has much flexibility in choosing a carrier. Property, liability, and flood insurance premiums are fundamentally different than other closing costs, and therefore should remain excluded from the finance charge.

APPLICATION OF RE-DEFINITIONS TO OTHER TYPES OF LENDING

The Board solicits comment as to whether the re-definition of finance charge and APR should apply to other types of credit, such as closed-end consumer credit or HELOCs.

We do not feel that the re-definitions should be adopted as proposed, and as such we do not believe they should be extended to any other type of credit, for the same reasons already mentioned above. Additionally, closed-end consumer credit tends to have far fewer fees and are generally much more simple than mortgage loans. Therefore, there is no need to complicate the process. HELOCs, as revolving loans, more closely resemble credit cards and therefore, if any re-definition should be adopted, it should be the elimination of the effective APR as was implemented for credit cards.

OPTIONAL PRODUCT DISCLOSURES – CREDIT INSURANCE & DEBT PROTECTION

TILA Section 106(b), 15 U.S.C. 1605(b), and §§ 226.4(d)(1) and 226.4(d)(3) allow a creditor to exclude from the finance charge a credit insurance premium or debt cancellation or debt suspension fee if the creditor provides disclosures that inform the consumer of the voluntary nature and cost of the product. Currently, Regulation Z does not specifically mandate the format of these disclosures, but provides sample language in the model forms.

The Board states that concerns have been raised regarding:

(1) Current Disclosures: whether the current disclosures sufficiently inform consumers of the voluntary nature and costs of the product;

(2) The product's cost and benefits: The Board states that the product may be more costly than, for example, traditional life insurance, but may not provide additional benefits; and

(3) Eligibility restrictions: The Board states that consumers might not be aware that they may incur a cost for a product that provides no benefit to them if the eligibility criteria are not met at the time of enrollment. There may also be other eligibility restrictions after enrollment, such as preexisting health conditions, that the consumer may not be aware of.

As such, the Board, after consumer testing, has proposed that the following H-17(C) "model" disclosure be required for closed-end mortgage loans:

> **[OPTIONAL COSTS]**
> (*Name of Program*)
>
> [**STOP.** You do not have to buy this product to get this loan.]
>
> • If you have insurance already, this policy may not provide you with any additional benefits.
>
> • Other types of insurance can give you similar benefits and are often less expensive.
>
> • Based on our review of your age and/or employment status at this time, you [would][may] be eligible to receive benefits.
>
> • [However, you may not qualify to receive any benefits because of other eligibility restrictions.]
>
> To learn more about [credit insurance][debt cancellation coverage][debt suspension coverage], go to (*Web site of the Federal Reserve Board*).
> [Yes, I want to purchase optional (*name of program*) at an additional cost of (*cost*) per (*month or year*) for a loan of (*loan amount*) with a (policy/coverage) term of (*term in years*) years.]
>
> [(*Name of program*) is required and costs (*cost*) per (*month or year*) for a loan of (*loan amount*) with a [policy/coverage] term of (*term in years*) years.]
>
> _____
> Signature of Borrower(s) Date

We take issue with the above proposed disclosures, and submit the following comments:

PRODUCT COSTS AND BENEFITS: THE BOARD'S ASSUMPTIONS ARE FACTUALLY FALSE.

The Board's statements that the cost of loan protection products may be more expensive than traditional life insurance, and provides no additional benefit, are factually false. We explain as follows.

Credit Life Insurance. Credit life insurance pays the balance of the loan (up to limits mandated by the carrier and state insurance law) for which it is purchased. Therefore, even if a consumer already has a group or individual life insurance policy in place, the credit life benefit is **always, by definition, an additional benefit.** Consumer debt is not extinguished upon the death of the borrower. Therefore, credit life insurance is an added benefit. For example, suppose that a consumer has a vehicle loan with an outstanding balance of $30,000, and a $100,000 group or individual life insurance policy. If the consumer dies, his estate will still owe $30,000 to the creditor. Therefore, only $70,000 would be available to meet the needs of his widow and children. However, if the consumer had purchased credit life insurance for, e.g., $20 per month, the loan would be paid off upon his death. His widow and children would have $100,000 in life insurance proceeds available to them. Therefore, the credit life policy provided a very important $30,000 benefit.

It is also not necessarily true that ordinary life or term insurance is less expensive. These products are only available in much larger amounts, and for much longer terms, than is necessary to cover the average outstanding consumer indebtedness. Therefore, it would not be cost-efficient for a consumer to separately purchase individual life insurance just to cover a consumer loan. As such, these products are only less expensive on a unit-cost basis. The actual amount that a consumer will pay for a typical credit insurance policy is, in reality, extremely small when compared to the hundreds or thousands of dollars required to purchase the typical ordinary or term life product.

Credit Disability Insurance. Similarly, credit disability insurance also provides a benefit that is in addition to any individual disability insurance that consumers may purchase on their own or have through their long-term disability (LTD) benefit provided by their employer. If an employer has a LTD program in place (not all employers do), typical LTD benefits only cover about 60% of a consumer's income, and such LTD benefits usually offset any individual disability insurance benefits that the consumer might have. Credit disability and individual disability are also very different products. We explain as follows.

Individual disability policies are very expensive and difficult to qualify for. To obtain individual disability insurance, consumers must go through a complicated and rigorous application process, including taking, and passing, blood tests and paramedical exams and undergoing other intense scrutiny of the consumer's entire medical history. For smokers, the coverage is much more expensive, and may be declined altogether. Pre-existing conditions can be excluded if the consumer had even one instance of the condition many years ago, or has a relatively minor condition. For example, a typical individual disability policy will exclude Acid Reflux Disease; thus, if an insured has acid reflux disease and later develops esophogeal cancer because of it, any resulting disability will not be covered, even if the insured has no other history of cancer. There are also exclusions and/or increased premium cost based on the nature of the consumer's work; e.g., manual labor or dangerous jobs will be excluded or more expensive to insure versus a sedentary office worker. Another disadvantage to individual disability benefits and employer LTD benefits is that very long waiting periods exist, meaning that the consumer must be disabled for a long period of time, which could be up to 4 months or longer, before benefits will be paid.

In contrast, credit disability insurance does not distinguish between smokers and non-smokers or by the type of work that the consumer does. There is no medical exam. Waiting periods are typically only 15 or 30 days. Consumers will answer only a few health questions at application time, which are designed to exclude only serious health conditions. For example, Securian's credit disability and debt cancellation programs screen only for occurrence within the prior two years of cancer; heart attack, stroke and corony heart disease; cirrhosis; and HIV/AIDs. The only other eligibility requirements at the time of application are based on age (typically age 66 or 70), and that the consumer be employed. What type of job a consumer has is irrelevant. The pre-existing condition exclusion is limited to medical conditions that occur within six months prior to the effective date, and which result in a disability arising within six months after the effective date of the insurance.

As one can see, there are stark differences in the two products, and individual disability policies are not an equivalent of credit disability insurance, and individual disability policies are not cheaper than credit disability. It is not reasonable to assume that a consumer will undertake the time, effort, and cost of an individual disability policy just to cover the cost of his monthly loan payments.

Moreover, even if a consumer is savvy and fortunate enough to be able to qualify for, and afford, individual disability insurance, a credit disability policy will **always, by definition, provide additional benefits** to the consumer. If the consumer is unable to work due to a disability, he will be forced to live on a decreased income each month, even if he has an individual disability policy. The credit disability policy will pay his monthly loan payment. This is one less expense the consumer will need to deduct from his tightened budget while he recovers. For example, suppose a consumer has an auto loan with a $400 monthly payment, and he is receiving $1,000 in individual disability benefits. Without credit disability, he would still be responsible for the loan payment, decreasing his monthly income to $600 per month. With credit disability, the loan payment is paid, and the consumer has the full $1,000 to use for other monthly expenses. Suppose further that the consumer's disability is caused due to espophogeal cancer, and, as discussed above, this is an exclusion from his individual policy. He would not receive the individual policy benefits; however, his loan would be paid through the credit disability policy, and he has one less expense to worry about.

Credit disability insurance will also often be the only disability coverage a consumer has. As noted above, due to the complexities of purchasing an individual disability policy, most consumers simply don't obtain such coverage. Many will not qualify for individual disability insurance due to the nature of their jobs or certain health conditions, and many simply can't afford it. Therefore, many consumers will simply not have any alternatives to credit disability insurance.

Based on the above, it is simply and categorically untrue that there are comparable, less expensive alternatives to credit disability insurance. Any statement to the contrary would be providing consumers a great disservice.

Debt Cancellation and Debt Suspension Coverage. Debt Protection such as debt cancellation and debt suspension is a contract between the lender and borrower which will cancel or suspend the borrower's payments or loan balance if specified protected events such as death, disability, and involuntary unemployment occur. The cost of such products is very similar to the cost of credit insurance.

There is no comparable product available to the borrower, unless one refers to credit insurance. In such a case, the discussion above regarding credit life and disability applies here.

Additionally, credit involuntary unemployment insurance is less-widely available due to its cost. Therefore, there is no alternative for many borrowers if involuntary unemployment debt cancellation is not offered by the lender.

Again, it is simply and categorically untrue that there are comparable, less expensive alternatives to debt protection coverage, and the Board should not be telling consumers otherwise. We ask that the Board withdraw such statements from the proposed rule.

ELIGIBILITY RESTRICTIONS – THE BOARD'S DISCLOSURES ARE INACCURATE

The Board states that (1) consumers might not be aware that they may incur a cost for a product that provides no benefit to them if the eligibility criteria are not met at the time of enrollment; and that (2) there may also be other eligibility restrictions after enrollment, such as preexisting health conditions, that the consumer may not be aware of. As such, the Board is proposing the following two disclosures:

> • Based on our review of your age and/or employment status at this time, you [would][may] be eligible to receive benefits.
>
> • [However, you may not qualify to receive any benefits because of other eligibility restrictions.]

We recognize that understanding the various eligibility requirements may be somewhat difficult for some consumers. We are not unopposed to clarifying the disclosures as long as they are accurate and not overly burdensome. However, we believe that the Board's proposed disclosures do not characterize the eligibility requirements and exclusions accurately. We explain below.

Eligibility at Time of Application Versus Exclusions From Coverage

We believe that the Board may be inadvertently confusing two different concepts – the first is a consumer's eligibility at time of application; the second is exclusions from coverage.

Eligibility at time of application determines whether a consumer is eligible to *purchase* the product. Examples include whether a consumer is employed; whether he has had a heart attack in the two years prior to application; or whether he has received unemployment benefits within the two years prior to application. If the consumer has experienced any of those events, he is not eligible to purchase the applicable product, and the creditor should not sell it to him.

Exclusions from coverage determine whether a consumer currently enrolled in a credit insurance or debt protection plan will qualify for benefits at the time a claim is made for a particular occurrence. Examples include whether the claim is based on death or injury that was self-inflicted or caused by an act of war; whether a disability was due to normal pregnancy; or if unemployment was caused by retirement or because the consumer simply quit his job. Pre-existing conditions are also an exclusion. A typical pre-existing condition exclusion is when the death or injury occurred within 6 months after

enrollment and which was caused by a medical condition that occurred within 6 months prior to enrollment. If any of these circumstances are true at the time the event occurs, the claim will be denied. However, the consumer will still have coverage in place if he subsequently becomes disabled or involuntarily unemployed, and he may file a claim for benefits if a new occurence arises.

The Board's Disclosures

Based on the above, the Board's proposed disclosures are not accurate. First, the eligibility application disclosure reads:

- Based on our review of your age and/or employment status at this time, you [would][may] be eligible to receive benefits.

This is not accurate. Eligibility application is an absolute – the consumer either qualifies to purchase the product or he does not. As such, an accurate statement would be:

> Based on our review of your age and/or employment status at this time, you [are] [are not] eligible to purchase this product.

Next, the exclusions from coverage disclosure reads:

- [However, you may not qualify to receive any benefits because of other eligibility restrictions.]

There are two issues with this statement. First, if the consumer did not meet eligibility at application time, this disclosure is wholly unnecessary. Second, if the consumer did meet eligibility at application, he is no more or less likely to receive benefits or be denied benefits. As such, there is no way to determine at the time of application whether the consumer may or may not receive benefits. This would depend on the nature, timing, and circumstances of a claim that occurs at some point in the future. As such, it is too harsh, and potentially misleading, to state the disclosure in the negative sense. Essentially the Board would have the insurer/creditor tell the consumer that he may not qualify for benefits when that in fact may not be true. It also unfairly discourages a consumer from purchasing a valuable product based solely on an unfounded assumption.

As such, we suggest a more objective and accurate disclosure that allows the consumer to make an informed decision on whether to purchase the product or not. We suggest that the Board use a disclosure that is similar to the one mandated by the OCC's Debt Cancellation and Suspension rules:

> There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under this product. You should carefully read our additional information and/or the contract for a full explanation.

This disclosure gives consumers fair warning that, even if they purchase the product, there may be occasions where they do not qualify for coverage and their claim may be denied. This will prompt consumers to find out more about these circumstances and will encourage them to ask questions and read the product information. This in turn allows them to make an informed decision based on

information they have gathered, rather than making a short-sided decision based on unfounded assumptions and negative scare tactics.

OTHER ISSUES WITH THE PROPOSED H-17(C) DISCLOSURE

The "Stop" Statement is too harsh. This statement is too harsh. Stating that the product is optional and can be cancelled at anytime would suffice.

Providing the disclosure to those who are not eligible. As currently drafted, the Board's disclosure regarding eligibility gives a "will" or "may" alternative. As stated above, application eligibility is an absolute and a consumer either will or will not qualify to purchase the product at time of application. As such, the disclosures should only be given to those who are eligible to purchase the product, and therefore the statement should state that "you are" eligible to purchase the product.

Cost and Term Disclosure. This disclosure is not given until the consumer checks the "yes" box; it also contains the term of the coverage; and the loan amount. This is very convoluted, not completely accurate, and does not seem very effective. We suggest that the cost and term disclosures be given separately, above the election checkbox. The proposed cost disclosure also provides an alternative to provide a yearly cost. This is not done in the industry, except as an alternative to disclosing the total premium for a mortgage loan. If the Board is now eliminating the requirement to disclose the total cost for closed-end loans, the yearly disclosure is unnecessary. The monthly cost is more relevant to the consumer and easier for lenders to calculate. Using only "monthly" on the model form would suffice. (In the case of single-fee products, then the total fee would be definition be disclosed).

Use of Insurance Terminology. For the reasons stated above, we have asked the Board to delete or revise the statements that other types of insurance can give similar benefits at less cost, and that the product does not provide any additional benefit. However, if the Board keeps these statements (or similar), it should not refer only to insurance. Debt cancellation and suspension products are not insurance products, and use of the term "insurance" would misrepresent the nature of the product. It would therefore be misleading and confusing to the consumer, and could subject lenders to increased compliance risk if a regulator believes it is selling an insurance product which it is not licensed to sell, or is otherwise not complying with state insurance laws. We would suggest using the generic term, "product" instead of "insurance".

Lack of Declination Checkbox. We suggest adding a checkbox for consumers to decline coverage. This allows creditors and insurers to track and verify whether a consumer has declined coverage if any confusion arises in the future. This is standard industry practice and should be reflected on the form.

Reference to Board's Website. The Board does not solicit comment as to the content of the optional product information that the Board would post on its website. We respectfully request that the Board work with the Consumer Credit Insurance Association and the credit insurance and debt protection industries when determining the content of the site so that the content is as informative, accurate, and objective as possible.

SUGGESTED REVISED MODEL FORM

Based on all of the above, we would suggest a revised H-17(C) Model Form as follows. We have drafted it to cover open-end and closed-end loans; single-premium or single-fee products that are financed as part of the loan (for consumer loans) and monthly-pay-as-you-go arrangements. We have also added a disclosure for refunds of the single-premium or single-fee arrangement.

Federal Reserve Board

OPTIONAL COSTS
(*Name of Program*)

THIS PRODUCT IS OPTIONAL. You do not have to buy this product to get this loan. You may cancel this product at any time.

Eligibility Requirements, Conditions & Exclusions.

- Based on our review of your age and/or employment status at this time, you are eligible to purchase this product.
- There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under this product. You should carefully read our additional information and/or the contract for a full explanation.

Cost. The cost of this product is: [$_____ [per month] [per $__ of monthly outstanding loan balance]] –OR- [$___ and will be added to your Amount Financed].

[Refunds. The cost of this product has been added to your Amount Financed. If you cancel the product, you [will] [will not] be entitled to a refund of unearned premiums.]

Term of Coverage. The term of the coverage is [the term of the loan] [___ months], as long as you pay each monthly [premium] [fee] on time.

More Information. To learn more about this product, go to (*Web site of the Federal Reserve Board*).

Yes, I want to purchase this optional product at the additional cost shown above.

☐ _____*[(Consumer's election obtained via telephone)]*_____
Signature of Borrower(s) Date

No, I do not want to purchase this optional product at this time. _____ initials

☐

TELEPHONE PURCHASE RULE

The Board believes that a telephone purchase rule for closed-end credit is not appropriate because monthly statements are not required for closed-end credit, and it would be difficult for consumers who do not receive monthly statements to detect charges for unwanted coverage. Moreover, there is no billing error resolution process for closed-end loans. The Board also believes that a telephone rule may be "less necessary" for closed-end loans than open-end loans, because creditors would be more likely to solicit optional products after an open-end loan plan is established, rather than after a closed-end loan is consummated. Therefore, the Board's proposal does not contain a telephone purchase rule for closed-end transactions. The Board seeks comment on this issue.

We strongly believe that a telephone purchase rule should be in place for closed-end transactions, for several reasons:

1. Optional products are solicited after consummation of closed-end transactions. While the Board is probably correct when it states that telephone solicitation is more likely to occur under open-end loans than closed-end loans, it does in fact occur for closed-end loans, and creditors should continue to have the ability to do so. Credit insurance and debt cancellation products are important protections for both the consumer and the creditor. For consumers, it allows them to make their payments or extinguish their debts when they lose the ability to do so, thus protecting their financial security and credit scores. For creditors, it provides non-interest income to help maintain adequate capital, and protects it from loan delinquencies and charge-offs. As such, creditors have an incentive and an interest in providing the product to its entire loan portfolio, and to offer it to its borrowers as often as appropriate. Also, it is not unusual for a creditor to do a one-time offering to existing loans when it first implements a new optional product program. In other words, while the primary solicitation method of the product may be face-to-face at the time the loan is closed, the creditor may wish to offer it, once, to existing loan customers, rather than only to those who take a new loan. In such a case, there will be no opportunity for a face-to-face solicitation to those existing borrowers. Therefore, the solicitation must be either via telephone or mail.

2. The OCC Debt Cancellation & Suspension Rules allow for telephone solicitation for closed-end transactions. The OCC spent much time consulting consumers and the industry when it fashioned its telephone solicitation rules. As such, since 2002, federally-chartered creditors have been allowed to solicit debt protection via telephone on both open-end and closed-end loans. Most state charters have this ability as well, since most state laws either mimic the OCC debt cancellation rules, or the states have instructed their financial institutions to follow the OCC rules. By not adopting a telephone solicitation rule, the Board would be creating an inconsistency that would only create confusion for the consumer and an untenable compliance issue for creditors.

3. Consumers in closed-end transactions have protections from unwanted charges. If the coverage is sold on first-lien mortgages or other loans requiring escrow, RESPA requires that the charges for optional products be disclosed on the escrow statements. While billing statements are not required by Reg Z, mortgage lenders do provide them in order to collect the monthly payment. Many creditors also itemize the optional product premium or fee on the monthly billing statements, because they itemize P&I payments and therefore must account for the difference between the P&I amount and

monthly payment due. If the consumers decide to cancel the product, or allege that they never purchased the product, state insurance law and the OCC debt cancellation rules (and similar state laws) require the insurer to cancel the coverage and refund any unearned premiums. Consumers are also free to file a complaint with their state insurance department, attorney general, or department of financial institutions. And they can also sue, either individually or as a class, under consumer fraud laws, Reg Z, and similar laws.

Based on these reasons, we believe the Board should adopt and apply the telephone solicitation rules that it adopted in its January 2009 Reg Z final rule to closed-end transactions. This would make the rules consistent with the OCC rules as well as the proposed HELOC rules.

PROPOSED NEW LOAN FORMS & DISCLOSURES

We submit the following comments with regard to the Board's proposed new forms and disclosures.

EXPANSION OF RULES TO "DWELLING"

We do not object to expanding the rules to "dwellings" inasmuch as that term applies to second homes or vacation homes. However, the rules should apply only to real-estate-attached dwellings, rather than to such collateral as boats or RVs that someone may be able to sleep in but the consumer does not plan to live in, or mobile homes that are not permanently affixed to the land. These are consumer products for which a mortgage is not taken, and are not treated as real estate loans by creditors, consumers, or state law. Rather, creditors' liens are filed by noticing the lien on a Certificate of Title with the state Department of Motor Vehicles. As such, the mortgage rules should not apply.

APPLICATION DISCLOSURES

The Board proposes to require creditors to provide the following disclosures at the time an application is provided:

- For adjustable rate mortgages, the ARM loan program disclosure, for each program in which the consumer expresses an interest;
- The ''Key Questions about Risk'' document published by the Board; and
- The ''Fixed vs. Adjustable-Rate Mortgages'' document published by the Board.

Creditors no longer would be required to provide the CHARM booklet, as discussed under § 226.19(c).

We have no objections to these documents, and we agree with the elimination of the CHARM booklet. There are no other loan types for which these disclosures should be given.

GOOD FAITH ESTIMATES OF DISCLOSURES WITHIN 3 DAYS OF APPLICATION ("EARLY DISCLOSURES")

We generally like the simplicity of these disclosures and model forms. However, we do have some concerns, as follows:

THE APR DISCLOSURE

As discussed earlier, we do not believe an all-inclusive APR should be used. This disclosure should be eliminated or de-emphasized in favor of the interest rate. If it is not eliminated, we have several concerns with this section. We explain as follows.

1. This disclosure requires the lender to explain how the effective APR compares with similar loans in the industry by showing the Average Prime Offer Rate and the HOEPA rate. As discussed earlier, however, the APOR and the HOEPA rates are interest rates (or interest rate plus points), not an all-inclusive APR as the Board proposes. This requirement would force the lender to compare its APR with other interest rates (or interest rate + points), which is an invalid comparison and makes the disclosure both meaningless and misleading.

2. Operationally, plotting the APRs on the proposed scale will be a technology and cost nightmare. There are at least 4 calculations that a lender's system will need to compute WEEKLY in addition to tracking and placing the APOR and HOEPA rate and the consumer's actual APR. Updating and maintaining such a form weekly is extremely costly and difficult, and could lead to compliance issues if the system glitches. Humans will need to monitor and input the weekly APOR and HOEPA rates. Even something that sounds so simple as the shading on the scale is not simple. Many software programs used to produce mortgage forms are not able to produce shading. The Board has estimated 80 man-hours to program and produce this scale initially. That is roughly $10,000, which is unreasonable for something with nominal benefit to consumers and something that does not have to be in this format. It also does not include the cost of revising, mapping, and loading the new forms and on-going maintenance. This graphic should be eliminated.

3. The comparison to the APOR and HOEPA rate is only relevant for first-lien purchase-money mortgage loans. Second mortgage rates tend to be higher and not as closely linked to the APOR and HOEPA rate (or the rates are determined by adding a premium to these benchmarks). Therefore, the lender would be forced to compare its second mortgage rates to what are essentially first-mortgage rates. This is misleading, confusing, and an unnecessary disadvantage to lenders.

4. The Board's language regarding the APOR is inaccurate. The Board refers to this rate as, "Average Best APR" which is given to "applicants with excellent credit" (e.g., 5.66% in the example). However, this rate is simply the average for all similar mortgage loans that week; it is not necessarily the "best" and not necessarily only given to "excellent" credit. Such a disclosure is misleading and inaccurate. It will just spark more questions, more confusion, more explanation by the loan officer, and potentially bad feelings and consumer relations issues if the consumer is confused, upset, or doesn't understand his APR, the comparisons that are being made, and the implications that his credit standing is poor. As noted previously, consumers don't understand their own APR. They will not understand comparisons to other APRs.

5. The Board's language regarding the HOEPA Rate is also inaccurate. The Board refers to this rate as "high cost" available to "poor credit", when that is not necessarily the case. The 7.16% that the

example refers to is for "higher-priced" mortgage loans, not High Cost HOEPA loans. HPMLs are not necessarily given to people with "poor credit", and the Board conceded the fact that HPMLs can dip into the Prime market when it issued the HPML rules. This will be especially so if, as the Board concedes, more loans will be launched into this category simply because of the new requirement to lump all fees into the APR. Overall, this disclosure will only alarm and confuse consumers.

6. The scale sets out unnecessary "miscellaneous" APRs. The scale also has two other APRs between the APOR and the HMPL threshold. Those appear to be simply place-holders or reference points to demonstrate the consumer's APR; however, this could cause the consumer to wonder what they represent, if they have any meaning, and what they mean to the consumer and his loan. It is also additional numbers and text that the creditors will have to maintain and revise as the APOR and HOEPA rates change. There is simply no reason for this and the operational cost and burden is unreasonable.

7. There is also no utility in disclosing the highest APR disclosed (11.16% in the example). This APR appears to be simply 4% over the HPML threshold. This seems to be an artificial or random APR that the Board added for no apparent reason. Again, this unreasonably adds one more figure for creditors to maintain and revise as rates change, and one more figure for consumers to wonder about.

8. The disclosure, "How much could I save by lowering my APR?" is misleading. This disclosure implies that the particular creditor is offering a 1% reduction in the APR, or that the consumer may qualify for a 1% lower APR at another lender, which simply may not be true. Even if the creditor offers such a rate reduction, it typically does so in exchange for higher closing costs. In this case, the disclosure is a half-truth and does not accurately disclose the overall cost of receiving the rate reduction. This disclosure should be eliminated. Alternatively, this disclosure could state that the creditor either does not offer a rate reduction/tradeoff, or that the creditor does offer such tradeoff and the consumer should ask for more details. We also note that this disclosure will never be applicable to non-purchase junior-lien mortgage loans; such a rate reduction or tradeoff is not offered on such loans. If this disclosure is adopted, we ask for an exclusion from this requirement for non-purchase junior-lien home equity loans.

For the above reasons, we simply see no reason to complicate the APR disclosure. The Board's own consumer research clearly shows that the consumer does not understand the APR, yet the Board is proposing to inundate the consumer with not only his own APR, but 5 more APRs. This does not clarify anything for the consumer (nor the creditor), and only adds operational burden, cost, and compliance exposure for creditors. We request that this proposed disclosure be withdrawn entirely. Alternatively, if the Board retains the effective APR disclosure, we request that this disclosure simply state:

> **APR:** _____%. This is the overall cost of your loan, expressly as a yearly rate, and includes interest and settlement charges.

MODEL FORM H-19(E) - FIXED RATE MORTGAGE WITH INTEREST ONLY SAMPLE

This form is confusing. The form describes the loan type as "fixed rate mortgage, including interest-only payments". This infers that it is interest-only for the entire term, with a balloon payment at

maturity. However, in the Interest Rate & Payment Summary, it has columns for "Maximum Ever", which presumably refers to the maximum rate, and "Introductory". These are adjustable or variable rate terms, not fixed rate terms. As such, this section makes it sound like the loan has a variable rate. Moreover, in the second column, it shows a principal payment. This is the first we learn that, at some point, the monthly payment will increase to include principal.

We therefore suggest the following changes:

- In the Loan Summary, describe the Loan Type and Features as:

  Fixed Rate Mortgage
  - with interest-only payments for the first 10 years
  - principal & interest payments thereafter

- In the Interest Rate & Payment Summary, change the headings of the columns as follows:

Interest-Only Period Rate & Monthly Payment (first 10 years)	Principal & Interest Period Rate & Monthly Payment (beginning in the 11th year)

We believe that, with these changes, the forms will more accurately reflect the nature and characteristics of the loan.

Itemization of Amount Financed. We would ask that the Itemization not be required until the "final" disclosures are provided. This is because in many instances, this information will not be known within three days of application. For example, for any services that the consumer can shop for, the consumer may not have determined whether he will shop for the service or use the creditor's service provider, nor will he have decided on the provider to use. Also, in the case of a home equity loan, the creditor may be consolidating debt held with other creditors. Exactly whom these creditors are and the pay-off amounts will not be known within 3 days after application.

Alternatively, we ask that a cross-reference to the final disclosures be sufficient to satisfy the Itemization requirement. For example, a creditor could state, "Itemization of Amount Financed: See Final Disclosures" or "The Itemization of Amount Financed will be provided with your final disclosures three business days prior to closing".

Signatures. We request clarification that the borrower's signature is optional on all forms, and that the signature line can be removed if a creditor chooses not to have this form signed.

ADJUSTABLE RATE OR VARIABLE RATE DISCLOSURES

We are concerned that the ARM model forms as proposed do not sufficiently inform the consumer that the rate will change. We believe that the APR and interest rate disclosures as currently drafted could mislead the consumer into believing that it is a fixed rate. We are also unclear as to which interest rate is being used (the maximum possible? the current rate?). For ARMs, we suggest a re-working of the

interest rate and APR disclosures, and to include an explanation of the rate changes. We also note that the APR disclosure, if an all-inclusive APR is used, does not make much sense. This disclosure would in reality only represent the overall cost of the 1st year of the loan, because settlement costs are only paid in the first year.

We also note that in the Model Forms (we use H-19(H) as an example), we believe the examples are inaccurate. First, the Board bases the maximum at first adjustment (8.875%) on the introductory rate (i.e., at the first adjustment, the creditor will increase the intro rate by the maximum allowed in one year, 2.00%). However, most creditors do not impose the maximum at the end of the intro period; rather the consumer's interest rate is Prime + margin. As such, in the example, the first and maximum adjustment beginning at the end of the intro period would be 7.00%. The same holds true for the "maximum ever" interest rate. This would be 6.00% + the rate at the end of the Intro period, or 6.00% + 7.00% = 13.00%.

We also note that these numbers are not explained before the consumer reads the Interest Rate and Payment Summary. This makes the disclosures confusing and meaningless.

We suggest replacing the Annual Percentage Rate disclosure with the following alternative Interest Rate disclosure:

INTEREST RATE:

During the first 5 years of your loan, your **Interest Rate** will be fixed at **6.875%**.

After that, your Interest Rate will be a variable rate that will change annually based on the one-year LIBOR Index plus your margin of 5.00%.

Rate Changes**:** After the introductory period, the interest rate can increase up to 2% in one year if the Prime Rate changes. The rate will never be more than 6% plus your initial rate when the introductory period ends. [The interest rate will never be less than ___%].

Examples of possible interest rates. Today's one-year LIBOR Index is 2.00%. This means that, if Prime does not change, your interest rate at the end of the introductory period would be 7.00%; the maximum it could be the following year is 9.00%; and the highest it could be ever would be 13.00%.

Interest Rate and Payment Summary. We request that a statement be added that these figures are estimates only and that the consumer's payments will be different.

DISCLOSURES 3 DAYS PRIOR TO CLOSING - "FINAL DISCLOSURES"

We note the same comments for the "final" disclosures as we do for the disclosures required within 3 days of application, as discussed above.

Additionally, the Board seeks comment regarding the alternative to substitute the HUD-1/1A for the Itemization of Amount Financed. The Board believes that to permit substitution of the HUD-1 settlement statement for the itemization without requiring that it be delivered three business days before consummation would be inconsistent with the purposes of the MDIA amendments. The Board seeks comment on whether creditors would continue to make significant use of this alternative as proposed § 226.38(j)(1)(iii) would implement it and, if not, whether the alternative should be retained. If it should be retained, the Board seeks comment on how it might be structured without requiring that the HUD-1 settlement statement be received by the consumer earlier than RESPA requires while also preserving the purposes of the MDIA.

Creditors do use this alternative, and it should therefore be retained. As the Board notes, the HUD-1/1A is not required to be delivered 3 days before consummation. However, we believe that the Board has the authority to require that, if the creditor chooses to use the HUD-1/1A as its Itemization, it must be delivered with the "final" disclosures, i.e., 3 business days prior to consummation. This would not, however, require a rule stating that the HUD-1/1A must be delivered 3 business days before consummation for all creditors in all instances. If the rule is structured in this way, it provides all creditors with all alternatives. For example, if a creditor does not want to provide the HUD-1/1A three business days before closing, it can choose to provide a traditonal Reg Z Itemization with the Final Disclosures, and then the HUD-1/1A at closing. On the other hand, creditors who want to use the HUD-1/1A as the Itemization can do so, as long as they provide it with the "final" disclosures.

OTHER COMMENTS REGARDING VARIOUS PROVISIONS IN THE PROPOSAL

Optional Products - disclosures of escrows for taxes and insurance

The Board solicits comment on whether premiums or other amounts for credit life insurance, debt suspension and debt cancellation agreements and other similar products should be included or excluded from the disclosure of escrows for taxes and insurance.

Premiums and fees for optional products should not be included in the disclosure of the payment amount of taxes and insurance (escrow) for a few reasons. First, the monthly premium and fee will already be disclosed on the Optional Products disclosure, if a consumer qualifies for the product, and therefore the disclosures will be redundant and confusing. Second, when shopping for a loan, the importance of the cost of optional products are secondary to the amount of required monthly payments. Therefore it should not be included with the escrow amounts. Third, some creditors may not offer optional products, and some consumers will not qualify for such products. Keeping the optional product fee disclosure separate facilitates an apples-to-apples comparison of the monthly loan payment amount. The two disclosures should remain separate.

Prepayment Penalty Fees

Proposed comment 38(a)(5)-2(iii) states that origination or other charges that a creditor waives on the condition that the consumer does not prepay the loan are prepayment penalties, for transactions secured by real property or a dwelling. Fees imposed for a preparing a payoff statement and performing other services when a consumer prepays the obligation would not be considered a prepayment penalty under the proposed rule, however. Such fees are not strictly linked to a consumer's

prepaying the obligation, as they are charged at the end of a loan's term as well. The Board solicits comment on this distinction.

We agree that fees for preparing payoff statements and similar functions are not prepayment penalties.

We disagree, however, that reimbursement of fees paid by the creditor are prepayment penalities. Reimbursement of closing costs paid by the lender if a borrower pays off early have, for many years, been considered NOT to be a prepayment penalty. This has been based on the interpretation of various regulators including the OCC, NCUA, and state banking departments (see, e.g., NCUA Legal Opinion Letters 96-0522 and 93-0206; OCC Interpretative Letter #744 (10/21/96); and Pennsylvania Department of Banking Legal Opinion Letter dated June 5, 1998).

The rationale is that the creditor has provided a benefit to the consumer by paying closing costs on the condition that the borrower agree to keep the loan for a certain period of time (typically 2 or 3 years). If the consumer chooses not to keep that agreement, he simply loses that benefit; this is not a pre-payment penalty. Nothing in the law or mortgage environment has changed the validity of this rationale, and the rule should not be changed.

Moreover, pre-payment of loans costs creditors money, which is a fact that the Board has acknowledged. If a creditor takes the risk of paying closing costs, it must be reasonably assured that it will recoup the funds expended. If this exception is eliminated, creditors will stop paying closing costs, and "no-closing-cost loans" will become extinct. This will cause consumers to have to come up with thousands of dollars up-front that they may not have, and could severely restrict consumers' ability to get a loan and purchase a home. We ask the Board to withdraw proposed comment 28(a)(5)-2(iii) with regard to reimbursement of lender-paid fees.

Timing of Insurance/Debt Cancellation Disclosures

The Board seeks comment on whether it should continue to permit creditors to make the insurance or debt cancellation disclosures under proposed § 226.4(d) together with or separately from other required disclosures. Consumer testing showed that many participants found these disclosures too long and complex, and as a result they do not read or only skim the disclosures. The Board is concerned that adding the insurance information to the information about loan terms required by proposed § 226.38 will result in "information overload."

We share the Board's concern that requiring the insurance or debt cancellation disclosures to be made as part of the required disclosures would increase the chance consumers would not carefully read all of the required disclosures. Most creditors disclose the 226.4(d) optional product disclosures separately from the 226.18 disclosures. Also, as noted earlier, keeping optional product fee disclosures separate from the monthly loan payment (P&I; escrow) amounts allows consumers to use an apples-to-apples comparison when they shop for the mortgages. Therefore, the Board should continue to permit creditors to make the 226.4(d) disclosures together with or separate from the other disclosures.

Customized vs. Multipurpose Disclosure forms

Under the proposal, creditors would not be permitted to use forms for more than one type of mortgage transaction (i.e., multi-purpose forms).The Board seeks comment on whether creditors already provide consumers with customized disclosure forms for mortgage loans in the regular course of business, or the extent to which creditors rely on multi-purpose forms. The Board seeks comment on potential operational changes, difficulties, or costs that would be incurred to implement the requirement to have transaction-specific disclosures for transactions secured by real property or a dwelling.

Currently, our clients rely heavily on multi-purpose forms for their mortgage loans. For example, typically, checkboxes will be used in the Fed Box to indicate whether the loan has a fixed or variable rate. (e.g., "if checked, this loan has a variable rate and the rate will change if the Prime Rate changes." It then cross-references the 226.19(a) variable rate disclosure form). The forms currently lend themselves well to multi-use because the same generic Fed Box is the bulk of the programming, and the customization follows immediately thereafter, regardless of the loan's particular features.

However, the proposed disclosures and model forms are by definition transaction-specific. As a forms provider, we recommend that our clients use the model forms. The content and format of the proposed model forms do not lend themselves to multi-purpose use. For example, in order to make H-19(E) into a multi-purpose form, we would have to add 4 more rows to the Loan Summary section for each additional loan type we wanted to add or, alternatively, add columns for each loan type. We'd have to add similar duplicative information for each section on the form. All of these duplicative sections would then have transaction-specific calculations mapped into each separate field. The form would quickly become unmanageable. The length would double for 1 additional loan type; triple for 2 additional loan types, etc. The number of fields that would need to be added and mapped would be untenable.

Additionally, having all loan types on the same form makes the form very inflexible. For example, if one loan type is discontinued, the form must be revised, which can be costly. If, however, the loan types were on separate forms, if one is discontinued, the lender can simply refrain from using that form.

Based on the above, it would be more simple, more managable, and no more costly to maintain separate sets of forms for each loan type. As such, we would not object if the use of multi-purpose forms is prohibited for mortgage loans. However, we request that the Board clarify that there is some flexibility in certain situations.

For example, in the case of a home equity loan, the rate is generally fixed. Many lenders, however, will provide for a discounted rate if the consumer makes automated payments or if he has additional services with the lender (e.g., has a checking account with the lender, etc.). In such a case, Reg Z requires that variable rate disclosures be provided to the extent that the rate will increase if the member discontinues automated payments, etc. We would ask that the Board allow a checkbox in that situation. For example, if we use Model Form H-19(E) for the final disclosures, we would add the checkbox to the Interest Rate Payment Summary section. We would add an asterisk to "6.50%" in the first and second columns. We would then add, below the Total Estimated Monthly Payment:

__ If checked, the rate disclosed above reflects a 0.25% discount because you have agreed to make your monthly payment via automated payments from your checking account. If you discontinue

automated payments, or you fail to maintain sufficient funds to make the automated payments, your rate will increase by 0.25%. Such an increase will take the form of higher payments.

Alternatively, this disclosure could be made at the bottom of page 2, or as part of the "More Information About Your Payments". We request that the Board clarify that such language, even if it does not apply to a particular consumer, can be placed on the disclosures, and where the best place to put it would be.

Disclosure Font Sizes and Graphic vs. Text Based

The Board seeks comment on whether the APR should be made more or less prominent using a larger or smaller font-size, and whether different graphs or visuals could be used to provide better context for the APR. The Board also seeks comment on the relative advantages and disadvantages of a graphic-based versus text-based approach to disclosing the APR, and the potential operational changes, difficulties, or costs that would be incurred to implement the graphic-based APR disclosure requirement for transactions secured by real property or a dwelling.

Once again we reiterate our concerns with emphasizing the APR, a disclosure that consumers do not understand, and one that they do not use when shopping for loans. The Board recognized this when it issued its new Final Rule regarding private education loans. Under the new student loan rules, it is the "interest rate" that is more prominent than the APR. We see no reason to emphasize the APR for mortgage loans, which are much more widely occurring with larger dollar amounts and more risk to the consumer, when it is not emphasized for the less risky student loans. If the Board decides to retain the APR disclosure, it should be de-emphasized.

We also reiterate our objection to the use of graphics and shading based on the major complexities and costs of programming and maintaining the plotting of the APR. While a simple table is easy to maintain, the graphic in the APR section is not. For a complete discussion of this, please refer to the "APR Disclosure" subsection in the "GOOD FAITH ESTIMATES OF DISCLOSURES WITHIN 3 DAYS OF APPLICATION" section above.

Creditor-Placed Property Insurance

45-Day Notice Requirement. Proposed § 226.20(e)(1) would define "creditor-placed property insurance" as "property insurance coverage obtained by the creditor when the property insurance required by the credit agreement has lapsed." Section 226.20(e) would apply to secured closed-end loans, including mortgage and automobile loans. The Board believes that a 45-day notice period would allow the consumer reasonable time to shop for and provide evidence of insurance. The Board recognizes that it may take several days for the consumer to receive a notice sent by mail, but the consumer would still have at least one calendar month in which to shop for and purchase property insurance. Comment is solicited, however, on whether a different time period would better serve the needs of consumers and creditors.

We are opposed to a notice period prior to force-placing insurance for several reasons, as follows.

First, the cost of forced-place insurance is one that is completely in the control of the consumer. It can easily be avoided simply by maintaining the coverage at the terms and cost that the consumer agrees to with his insurance carrier. To the extent a creditor might force-place coverage even when the consumer does in fact have insurance in place, the Board cited the proper channel through which to combat this fraud - the state courts. By enforcing existing state insurance laws and consumer fraud laws, the courts offer consumers the proper remedy.

Next, the Board's proposal would allow coverage to be lapsed for an additional 45 days, which does not benefit the consumer or the lender. Property insurance is an important safeguard for the financial well-being of the consumer, as well as the protection of the lender's interests in its collateral. Obtaining new coverage should be a priority, and should not be delayed. It would be unfortunate if the collateral was destroyed by fire or other casualty as the lender waits, helplessly, during the 45-day notice period. If that were to occur, the consumer would be saddled with a home loan when he no longer has a home, with no way of rebuilding or otherwise recouping his losses; and the lender would have a large, unsecured loan on its books, with a borrower who has zero incentive to pay it back. This cannot be the intent of the Board.

Third, the Board states that only a few states have laws regarding this issue. Insurance laws are the purview of the states and is highly regulated, and if they have decided not to mandate an advance notice requirement, the Board should defer to them.

Alternative: Notice at time of loan. To the extent that consumers may not be aware that a lender has the right to obtain insurance, and that the coverage may be significantly more expensive than policies that consumers can purchase on their own, we would suggest a procedure required in many states for non-real-estate collateral (particularly motor vehicles). That is, a clear and conspicuous notice in the loan disclosures or contract. (see, for example, Washington Statute 48.22.115, which requires state-mandated language in 10 point uppercase font). Such a notice informs the consumer that property insurance is a requirement of the loan; that if the consumer does not provide proof of the coverage, that the lender can purchase coverage to protect its interests (which are not necessarily the same as the consumer's interests); that such coverage may not provide the best coverage available; and such coverage may be significantly more expensive than that which can be purchased by the consumer. The notice also informs the consumer that the cost will be added to the consumer's loan balance, thereby increasing the consumer's monthly payment or extending the time it takes to pay the loan in full.

We would also not be opposed to a requirement to provide notice to the consumer once coverage has been force-placed. Such notice is routinely given as a matter of course in the lender's operations so that the lender can recoup its expenditure. Lenders will also cancel the force-placed coverage upon proof from the consumer that he has obtained a policy on his own; lenders do not want the operational burden and cost of force-placing insurance coverage and would prefer that consumers maintain their own coverage.

Application to HELOCs. The Board solicits comment as to whether its force-placed insurance rule should also apply to HELOCs.

The same arguments above would apply equally to HELOCs. It would be inconsistent to require it on closed-end mortgage loans but not open-end mortgage loans. Again, however, we reiterate that a 45-day notice should not be required.

CONCLUSION

We believe that consumers can benefit from revised mortgage disclosures and simplified APR rules. We respectfully disagree with the Board, however, on how this should be accomplished.

We urge the Board not to re-define "finance charge" and "APR" to include all fees and charges. This will be a detriment to consumers and creditors alike. If the definition is to be changed, it should exclude all fees and charges, similar to what the Board has done for credit cards and student loans. Such a change would emphasize "interest rate" which is understood by consumers and eliminate or de-emphasize the much-misunderstood APR.

We also urge the Board to withdraw its inaccurate disclosures regarding optional credit insurance and debt protection products.

We ask the Board to revise its proposed disclosure rules and Model Forms to better describe variable rate features contained in Adjustable Rate Mortgages, and to better describe the features of a fixed rate mortgage.

Finally, we ask for a 12-18 month implementation period.

We appreciate the Board's efforts and this opportunity to submit our comments. We would like to be a resource for the Board as it continues its rulemaking. If we can be of further assistance, please do not hesitate to contact us at the above numbers or addresses.

Sincerely,

/s/
Catherine Klimek
Counsel